

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION

EMG TECHNOLOGY, LLC,	§	
	§	Hon. Leonard Davis
Plaintiff,	§	Civil Action No. 6:08-CV-00447
	§	Jury Trial Demanded
v.	§	
	§	
APPLE INC.,	§	
AMERICAN AIRLINES, INC.,	§	
DELL, INC.,	§	
HYATT CORPORATION,	§	
MARRIOTT INTERNATIONAL, INC., &	§	
BARNES & NOBLE, INC.	§	
	§	
Defendants.	§	

**DECLARATION OF J. CHRISTOPHER CARRAWAY  
IN SUPPORT OF DEFENDANTS' MOTION TO TRANSFER**

1. I, J. Christopher Carraway, am an attorney with Klarquist Sparkman, LLP, counsel for Defendant Microsoft Corporation in Case No. 6:09-cv-00367, and I have been admitted *pro hac vice* to practice in this Court for that case. I have personal knowledge of the facts herein, and, if called as a witness, could testify competently thereto.

2. I calculated relative travel times of flying to the Eastern District of Texas and the Central District of California (“CDCA”) by accessing the popular travel website <http://tickets.priceline.com/> (“Priceline.com”). I used the tools available on Priceline.com to determine overall flight times to the Eastern District of Texas and the CDCA for each of the parties and the non-party witnesses identified in the accompanying Motion to Transfer. In collecting this information, I assumed that individuals would travel between January 15 and 22, 2010 and I used the shortest travel time, regardless of cost. I also assumed that people would attempt to get to Tyler, Texas by flying into the Tyler Pounds Regional Airport (“TYR”), which is less than 10 miles from the Federal courthouse in Tyler, and that people would attempt to get

to Los Angeles, California via Los Angeles International Airport (“LAX”), less than 20 miles from the Federal courthouse in Los Angeles. My estimated travel times did not account for the time it would take to get from the airports to the courthouses. I calculated travel times for each individual and entity listed in the Motion to Transfer as a non-party witness and for each defendant in both EMG cases pending in this District, Nos. 08-cv-00447 and 09-cv-00367.

3. I calculated relative travel distances using Google Earth, an interactive mapping application distributed by Google at <http://earth.google.com/>. Google Earth has a “ruler” tool that provides the straight-line distances between any two points on the map. The miles between two points vary based on what exact point is used for a starting and finishing location. Thus, there may be some minor variances (0-10 miles) in mileage based on what exact points are used. For each individual or entity listed in the Motion to Transfer as a non-party witness and for each defendant in both actions, I used the ruler tool to determine the distance between the individual or entity and (a) Tyler, Texas and (b) Los Angeles, California.

4. Attached as Exhibit A are my findings, with a summary of my results set forth in the tables below:

#### ***Identified Non-Party Witnesses***

<b>Time/Distance</b>	<b>To LAX</b>	<b>To TYR</b>	<b>Net CDCA Advantage</b>
Hours spent traveling	47 min	4 hr, 54 min	3 hr, 7 min
Miles traveled	231 miles	1423 miles	1192 miles

#### ***Parties and Their Witnesses***

<b>Time/Distance</b>	<b>To LAX</b>	<b>To TYR</b>	<b>Net CDCA Advantage</b>
Hours spent traveling	4 hrs, 24 min	4 hr, 20 min	(4 min)
Miles traveled	1697 miles	949 miles	(748 miles)

5. Attached as Exhibit B is a true and correct copy of Plaintiff EMG Technology, LLC’s Initial Disclosures served by Plaintiff in the Case No. 08-cv-00447.

6. Attached as Exhibit C is a true and correct copy of the first page of U.S. Patent No. 7,441,196 (the “196 patent”), one of the patents in suit, listing locations within the CDCA as the residences of the named inventors and assignees.

7. Attached as Exhibit D is a true and correct copy of the first page of U.S. Patent No. 7,020,845 (the “845 patent”), the other patent in suit, listing locations within the CDCA as the residences of the named inventors.

8. Attached as Exhibit E is a true and correct copy of the first page of U.S. Patent No. 6,600,497 (the “497 patent”), the patent to which the patents in suit claim priority, listing locations within the CDCA as the residences of seven of the eight named inventors and all of the named assignees. The remaining named inventor, based on research discussed in paragraph 10 below, presently appears to reside in the CDCA as well.

9. I searched for the location of the relevant attorneys who prosecuted the patents in suit on each attorney’s firm’s website. Attached as Exhibit F is a true and correct copy of the attorney profiles from the attorneys’ firms, listing the location of the relevant prosecuting attorneys as follows:

<b>Attorney</b>	<b>Location</b>
Thomas Ciotti	Palo Alto, CA
Thomas M. Coester	Los Angeles, CA (CDCA)
Scott Doyle	Washington, DC
John E. Gunther	Westlake Village, CA (CDCA)
Jun-Youg E. Jeon	Pasadena, CA (CDCA)
Jonathan Miller	Los Angeles, CA (CDCA)
Steven C. Sereboff	Westlake Village, CA (CDCA)
Brennan C. Swain	Los Angeles, CA (CDCA)

10. I searched for the current locations of identified witnesses on various Internet websites, including [www.LinkedIn.com](http://www.LinkedIn.com), [www. Wikipedia.com](http://www.Wikipedia.com), [www.ZabaSearch.com](http://www.ZabaSearch.com), and [www.Google.com](http://www.Google.com), as well as the Patent Office's website and the World Intellectual Property Organization's website. Attached as Exhibit G is a true and correct copy of the Web pages and/or patents that evidence the apparent locations of these witnesses as follows:

<b>Relevance</b>	<b>Witness</b>	<b>Location</b>
Named inventor on alleged priority patent	John Marinuzzi	Mission Viejo, CA (CDCA)
Knowledge of development, publications, patenting, and 1997-98 public use of Unwired Planet	Openwave Systems, Inc. employees	Redwood City, CA
	Tim Hyland	Bay Area, CA
	Alain Rossmann	Menlo Park, CA
	Peter King	Bay Area, CA
	Bruce Schwartz	Bay Area, CA
	Russell Greer	Bay Area, CA
	Mark Fox	San Francisco, CA
	Andrew Laursen	Bay Area, CA
	Mark Lentczner	Mountain View, CA
	Brad Sandman	Bay Area, CA
Knowledge of development, publications, and 1998 public use of Windows® CE mobile channels	Chris De Herrera	Los Angeles, CA (CDCA)
Knowledge of development and 1998 public use of WebTV	Bruce Leak	Los Altos, CA
	Stephen G. Perlman	Mountain View, CA
Knowledge of development and 1998 public use of Palm Web Clippings	Palm, Inc. employees	Sunnyvale, CA
Attempted commercialization of patents in suit	Art & Logic	Pasadena, CA (CDCA)
	Bob Bajoras	Los Angeles, CA (CDCA)
	Protovu	Foster City, CA
	Rick Soss	Foster City, CA
	Angel Gulermovich	Los Angeles, CA (CDCA)
	Online Labs (former) employees	Los Angeles, CA (CDCA)

11. Attached as Exhibit H is a true and correct copy of the '196 patent assignment history.

12. Attached as Exhibit I is a true and correct copy of the '497 patent assignment history.

13. Attached as Exhibit J is a true and correct copy of certain pages of the prosecution history of the '196 and '845 patents, identifying the following attorneys involved in the prosecution of the patents in suit: Thomas Ciotti, Thomas M. Coester, Scott Doyle, John E. Gunther, Jun-Young E. Jeon, Jonathan Miller, Steven C. Sereboff, and Brennan C. Swain.

14. Attached as Exhibit K is a true and correct copy of portions of PALM VII ORGANIZER HANDBOOK, 3Com Corp. (1998).

15. Attached as Exhibit L is a true and correct copy of portions of Brad Hill, WEBTV FOR DUMMIES (IDG Books 2d ed. 1998).

16. Attached as Exhibit M is a true and correct copy of Robert Hess, *Channels: A New Spin of the Dial*, SITE BUILDER NETWORK MAGAZINE, June 17, 1998 ([http://msdn.microsoft.com/en-us/library/bb263940\(VS.85\).aspx](http://msdn.microsoft.com/en-us/library/bb263940(VS.85).aspx)).

17. Attached as Exhibit N is a true and correct copy of the title page of U.S. Patent No. 6,473,609.

18. Attached as Exhibit O is a true and correct copy of what the “Internet Archive” (also called the “Wayback Machine”) indicates is the January 27, 1998 version of the Web page located at [www.unwiredplanet.com/alliance/contentprov.html](http://www.unwiredplanet.com/alliance/contentprov.html). The full URL for this archived page is:

<http://web.archive.org/web/19980127134141/www.unwiredplanet.com/alliance/contentprov.html>

19. Attached as Exhibit P is a true and correct copy of what the “Internet Archive” (also called the “Wayback Machine”) indicates is the January 27, 1998 version of the Web page located at [www.unwiredplanet.com/tech/tech\\_overview.html](http://www.unwiredplanet.com/tech/tech_overview.html). The full URL for this archived page is

[http://web.archive.org/web/19980127133957/www.unwiredplanet.com/tech/tech\\_overview.html](http://web.archive.org/web/19980127133957/www.unwiredplanet.com/tech/tech_overview.html)

20. Attached as Exhibit Q is a true and correct copy of what the “Internet Archive” (also called the “Wayback Machine”) indicates is the January 27, 1998 version of the Web page located at [www.unwiredplanet.com/new/press/dbc8\\_8\\_96.html](http://www.unwiredplanet.com/new/press/dbc8_8_96.html). The full URL for this archived page is

[http://web.archive.org/web/19980127135520/www.unwiredplanet.com/new/press/dbc8\\_8\\_96.html](http://web.archive.org/web/19980127135520/www.unwiredplanet.com/new/press/dbc8_8_96.html).

21. Attached as Exhibit R is a true and correct copy of portions of Jill T. and Wayne Freeze, INTRODUCING WEBTV (Microsoft Press 1998).

22. Attached as Exhibit S is a true and correct copy of the Judicial Business of the United States, 2008 report, Appendix C-10, Median Time Intervals from Filing to Trial for Civil Cases in Which Trials Were Completed, by District, During the 12-Month Period Ending September 30, 2008, found at <http://www.uscourts.gov/judbus2008/appendices/C10Sep08.pdf>.

23. Attached as Exhibit T is a true and correct copy of selected pages of the deposition transcript of Plaintiff’s principal, Elliott Gottfurcht, taken in Case No. 08-cv-00447.

24. Attached as Exhibit U is a true and correct copy of selected pages of the deposition transcript of Grant Gottfurcht, one of the named inventors of the patents in suit, taken in Case No. 08-cv-00447.

25. Attached as Exhibit V is a true and correct copy of selected pages of the Rule 30(b)(6) deposition transcript of EMG Technology, LLC, taken in Case No. 08-cv-00447.

26. Attached as Exhibit W is a true and correct copy of pages printed from the Pocket PC FAQ website, specifically pages found at the following addresses:

<http://www.pocketpcfaq.com/wce/20/mobilechannels.htm>; and

<http://www.pocketpcfaq.com/contacts.htm>.

27. Defendant Priceline.com, Inc. does not oppose the Motion to Transfer in Case No. Case No. 09-cv-00367.

28. I declare under penalty of perjury that the foregoing statements are true.

Executed this 7<sup>th</sup> day of January, 2010 in Portland, Oregon.

J. Christopher Carraway

**CERTIFICATE OF SERVICE**

I hereby certify that all counsel of record who are deemed to have consented to electronic service via the Court's CM/ECF system per Local Rule CV-5(a)(3) are being served with a true and correct copy of the above and foregoing document on this 7<sup>th</sup> day of January, 2010.

/s/ J. Christopher Carraway  
J. Christopher Carraway